

ESTTA Tracking number: **ESTTA270725**

Filing date: **03/08/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Mattress Doctor, Inc.
Granted to Date of previous extension	03/08/2009
Address	2523 East Colonial Drive Orlando, FL 32803 UNITED STATES
Attorney information	Neal J. Blaher Allen Dyer Doppelt Milbrath & Gilchrist PA Citrus Center, Suite 1401 255 South Orange Avenue Orlando, FL 32801 UNITED STATES nblaher@addmg.com Phone:407-841-2330

### Applicant Information

Application No	79031661	Publication date	09/09/2008
Opposition Filing Date	03/08/2009	Opposition Period Ends	03/08/2009
International Registration No.	0905354	International Registration Date	03/27/2006
Applicant	EVOTEKS EV VE OTEL TEKSTILI; SANAYI VE TICARET LIMITED SIRKETI Beysan Sanayi Sitesi, Fuar Cad. No. 10,; Haramidere Avcilar; Istanbul TURKEY		

### Goods/Services Affected by Opposition

<p>Class 010.</p> <p>All goods and services in the class are opposed, namely: Furniture made for medical purposes, namely, air mattresses for medical purposes, stretchers, orthopedic articles, namely, beds, commode chairs, namely, toilets adapted for medical patients or for use by handicapped persons, heating cushions for medical purposes, electric blankets for medical purposes, electrically heated air pillows for medical purposes, electrically heated draw sheets for medical purposes and air pillows for medical purposes; surgical drapes, incontinence sheets, water beds for medical purposes; and hospital beds for use by burn patients</p>
<p>Class 020.</p> <p>All goods and services in the class are opposed, namely: Furniture, namely, display stands, filing cabinets, medicine cabinets, desks, serving trolleys, deck chairs, furniture chests, camping furniture, office furniture, dining and bedroom furniture, living room furniture, bookcases, library shelves, trestle tables, tables, armchairs, settees, divans, sofas, sofa-beds, school furniture, index cabinets, kitchen and bath cabinets, mattresses, spring mattresses, pillows, cushions, air cushions, pillows and mattresses not for medical purposes, waterbeds, camping mats, namely, sleeping mats for placing</p>

under sleeping bags, locks not of metal, fittings and pieces not of metal for furniture; structural fittings for shelves and storage racks of metal; furniture casters not of metal

Class 024.

All goods and services in the class are opposed, namely: Woven and non-woven textile fabrics for home and commercial interiors, namely, fiberglass fabrics for textile use, water proof fabrics for manufacturing clothing, furniture and automobile upholstery, and luggage; fabric of imitation animal skins; curtains and shower curtains; household cloths, namely, dish cloths, table cloths not of paper; table cloths made of plastic, bed covers made of paper, bed linen; pique, namely, a light bed sheet used in the summertime in place of a duvet; pillow cases, duvet covers, unfitted fabric covers for furniture, table runners made of fabric, napkins of textile, praying rugs, namely, traveling rugs, duvets, quilts, bed blankets, hand and face towels, bath towels; textile wall hangings, fabric handkerchiefs, flags made of fabric, labels of cloth, banners of cloth, protection covers of fabric, namely, unfitted furniture coverings of textile

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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## Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3048190	Application Date	12/13/2004
Registration Date	01/24/2006	Foreign Priority Date	NONE
Word Mark	MATTRESS DOCTOR		
Design Mark	<b>MATTRESS DOCTOR</b>		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2001/08/20 First Use In Commerce: 2001/08/20 Retail store services in the field of mattresses, bedroom furniture, linens, pillows, pads, and related accessories for beds		

Attachments	76624462#TMSN.gif ( 1 page )( bytes ) Complaint - Notice.pdf ( 3 pages )(35030 bytes ) Complaint - Notice Exhibit A - Registration.pdf ( 1 page )(24134 bytes ) Complaint - Notice Exhibit B - Provisional Refusal.pdf ( 14 pages )(74273 bytes ) Complaint - Notice Exhibit C - Final Refusal.pdf ( 10 pages )(65600 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Signature	/Neal J. Blaher/
Name	Neal J. Blaher
Date	03/08/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MATTRESS DOCTOR, INC.,

Opposer,

v.

Application Serial No. 79/031661

Opposition No. \_\_\_\_\_

EVOTEKS EV VE OTEL TEKSTILI;

SANAYI VE TICARET LIMITED SIRKETI,

Mark: DR. MATTRESS

Applicants.

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**COMPLAINT - NOTICE OF OPPOSITION**

1. Plaintiff/Opposer MATTRESS DOCTOR, INC. ("Opposer") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located at 2523 East Colonial Drive, Orlando, Florida, 32803.

2. Opposer is the owner of the federally registered service mark, MATTRESS DOCTOR, registration no. 3048190 dated January 24, 2006, in class 35, in connection with retail store services in the field of mattresses, bedroom furniture, linens, pillows, pads and related accessories for beds. As reflected in the registration certificate, Opposer has been using this mark in interstate commerce since August 20, 2001. A copy of Opposer's USPTO registration is attached hereto as Exhibit A.

3. Defendants/Applicants EVOTEKS EV VE OTEL TEKSTILI and SANAYI VE TICARET LIMITED SIRKETI ("Applicants") filed their application to register DR. MATTRESS on March 27, 2006, pursuant to Section 66A, in connection with various furniture products in classes 10 and 20, and textile products in class 24. The specific identification of goods in each class includes mattress and bedding furniture products and accessories.

4. In an initial Office Action sent on January 11, 2007, the Trademark Examining Attorney issued a provisional refusal to register based on two prior registrations, *including Opposer's*, and on a number of prior pending applications. A copy of this First Office Action is attached hereto as Exhibit B.

(a) The Examiner first found similarity between the marks themselves:

“The applicant’s mark DR. NMATTRESS [sic.] and the wording in the registered marks MATTRESS DOCTOR and BED DOCTOR are similar in appearance and sound and would create the same general overall commercial impression among potential consumers.”

Furthermore, Applicant’s “transposition” of Opposer’s mark “creates a similar commercial impression and meaning.” Lastly,

“The literal portions of both marks are very similar in appearance, sound and meaning. The addition of the design element in applicant’s mark does not obviate the similarity between the marks in this case.”

(b) The Examiner also found Applicant’s goods “highly related if not identical to registrant’s goods,” and were “likely” to “travel through the same channels of trade to the same classes of purchases.”

(c) The Examiner concluded:

“The marks are similar. The goods/services are identical. The similarities among the marks and the goods/services are so great as to create a likelihood of confusion among consumers.”

5. Despite Applicant’s very extensive response, through counsel, to the First Office Action, the Examining Attorney issued a Notice of Suspension on July 10, 2007, based on prior pending applications previously cited.

6. On February 1, 2008, after considering Applicant’s arguments of counsel, the Examiner withdrew all prior opposition bases, *except only for Opposer’s registration*, and issued a *Final Refusal*. A copy of the February 1, 2008 Final Refusal is attached hereto as Exhibit C.

7. Only after Applicant submitted a request for further reconsideration on July 11, 2008, did the Examiner finally agree to allow Applicant's application to go through, and issue a Notice of Publication.

8. As the Examiner's first and final oppositions acknowledge and very clearly demonstrate, Applicant's DR. MATTRESS mark creates a likelihood of confusion with Opposer's earlier-filed and earlier-used MATTRESS DOCTOR mark, thereby threatening to damage Opposer's rights to and value in its mark.

9. Although Applicant seeks registration in three (3) different classes, the goods described in all three include various types of mattress and bedroom furniture products and accessories --- the very essence of the goods Opposer sells in connection with its MATTRESS DOCTOR mark.

10. Unless registration of Applicant's mark is refused, Opposer will be damaged as more fully set forth herein.

Based on the foregoing, Plaintiff/Opposer MATTRESS DOCTOR, INC. respectfully requests a ruling refusing registration of Defendant/Applicant's mark on the Principal Register.

Respectfully submitted,

Date: 8 March 2009

/s/Neal J. Blaher  
NEAL J. BLAHER, ESQUIRE  
Florida Bar No. 654050  
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& Gilchrist  
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nblaher@addmg.com  
Attorney for Opposer

**Int. Cl.: 35**

**Prior U.S. Cls.: 100, 101 and 102**

**United States Patent and Trademark Office**

**Reg. No. 3,048,190**

**Registered Jan. 24, 2006**

**SERVICE MARK  
PRINCIPAL REGISTER**

# **MATTRESS DOCTOR**

**MATTRESS DOCTOR, INC. (FLORIDA CORPORATION)**

**2523 EAST COLONIAL DRIVE**

**ORLANDO, FL 32803**

**FOR: RETAIL STORE SERVICES IN THE FIELD OF MATTRESSES, BEDROOM FURNITURE, LINENS, PILLOWS, PADS, AND RELATED ACCESSORIES FOR BEDS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).**

**FIRST USE 8-20-2001; IN COMMERCE 8-20-2001.**

**THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.**

**NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE MATTRESS, APART FROM THE MARK AS SHOWN.**

**SER. NO. 76-624,462, FILED 12-13-2004.**

**JACQUELINE A. LAVINE, EXAMINING ATTORNEY**

## PROVISIONAL REFUSAL OF PROTECTION

The table below presents the data as entered.

Input Field	Entered
<b>IDENTIFICATION SECTION</b>	
INTERNATIONAL REGISTRATION NUMBER	0905354
OFFICE REFERENCE	79031661
ORIGINAL LANGUAGE CODE	ENGLISH
<b>FILE SECTION</b>	
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## GOODS AND SERVICES SECTION

ALL GOODS AND SERVICES

Protection has been refused for all the goods and services.

INDICATOR

**INSTRUCTIONS SECTION**

FREE TEXT PROCESSING  
INSTRUCTIONS

U. S. designated on 20060327; Non-final examiner action

MAIL DATE

01/11/2007

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# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 79/031661

**APPLICANT:** EVOTEKS EV VE OTEL TEKSTILI; SANAYI  
VE T ETC.

**\*79031661\***

**CORRESPONDENT ADDRESS:**

ALEV YAVUZCAN  
Gül Sokak No. 19/5  
ACIBADEM ÜSKÜDAR/ISTANBUL TURKEY

**RETURN ADDRESS:**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MARK:** DR.MATTRESS

**CORRESPONDENT'S REFERENCE/DOCKET NO:** N/A

Please provide in all correspondence:

**CORRESPONDENT EMAIL ADDRESS:**

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

## OFFICE ACTION

**RESPONSE TIME LIMIT:** TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

**MAILING/E-MAILING DATE INFORMATION:** If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 79/031661

INTERNATIONAL REGISTRATION NO. 0905354 .

This is a **PROVISIONAL FULL REFUSAL** of the trademark and/or service mark in the above-referenced U.S. application. 15 U.S.C. §1141h(c).

**WHO IS PERMITTED TO RESPOND TO THIS PROVISIONAL FULL REFUSAL:**

Applicant may respond directly to this provisional refusal Office action, or applicant's attorney may

respond on applicant's behalf. However, **the only attorneys who can practice before the USPTO** in trademark matters are as follows:

- (1) **Attorneys in good standing with a bar of the highest court of any U.S. state, and**
- (2) **Canadian attorneys who have applied for and received reciprocal recognition** by the USPTO under 37 C.F.R. §10.14(c). Canadian attorneys can only represent Canadian applicants.

37 C.F.R. §10.14; TMEP §602.

Foreign attorneys are *not* permitted to practice before the USPTO, other than properly authorized Canadian attorneys. Preparing a paper, authorizing an amendment to an application, or submitting legal arguments in response to a requirement or refusal constitutes representation of a party in a trademark matter. *A response signed by an unauthorized foreign attorney is considered an incomplete response.* TMEP §§602, 602.03, 603.05.

#### **THE APPLICATION HAS BEEN PROVISIONALLY REFUSED AS FOLLOWS:**

##### **A. Refusal to Register: Likelihood of Confusion**

Registration of the proposed mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 3048190 and 3009891. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registrations.

A likelihood of confusion determination involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

#### **Similarity of the Marks**

The examining attorney must look at the marks in their entireties under Section 2(d). Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re National Data Corp.*, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976). *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1988). TMEP §1207.01(b)(viii). In this instance the dominant wording is the term DR or DOCTOR as the terms BED and MATTRESS are disclaimed as descriptive.

Disclaimed matter is typically less significant or less dominant when comparing marks. Although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); *In re National Data*

*Corporation*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); and *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553 (TTAB 1987). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ 2d 1001 (Fed. Cir. 2002); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); *In re El Torito Rests. Inc.*, 9 USPQ2d 2002 (TTAB 1988); *In re Equitable Bancorporation*, 229 USPQ 709 (TTAB 1986).

The applicant's mark DR. NMATTRESS and the wording in the registered marks MATTRESS DOCTOR and BED DOCTOR are similar in appearance and sound and would create the same general overall commercial impression among potential consumers. Similarity in sound alone is sufficient to find a likelihood of confusion. *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469 (TTAB 1975); *In re Cresco Mfg. Co.*, 138 USPQ 401 (TTAB 1963). TMEP §1207.01(b)(iv).

Furthermore Applicant's mark is essentially a transposition of the registrant's mark MATTRESS DOCTOR and creates a similar commercial impression and meaning. *In re Wine Society of America Inc.*, 12 USPQ2d 1139 (TTAB 1989); *In re Nationwide Indus. Inc.*, 6 USPQ2d 1882 (TTAB 1988); *In re General Tire & Rubber Co.*, 213 USPQ 870 (TTAB 1982); TMEP §1207.01(b)(vii).

The literal portions of both marks are very similar in appearance, sound and meaning. The addition of the design element in applicant's mark does not obviate the similarity between the marks in this case. *In re Shell Oil Company*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975); TMEP §1207.01(c)(ii).

## Similarity of the Goods

The second part of the legal analysis involves comparing the goods to determine whether they are similar or related, and could cause a mistaken belief among potential purchasers that the goods come from a common source. The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. The fact that the goods of the parties differ is not controlling in determining likelihood of confusion. The issue is not likelihood of confusion between particular goods, but likelihood of confusion as to the source of those goods. *See In re Rexel Inc.*, 223 USPQ 830, 831, (TTAB 1984), and cases cited therein; TMEP §§1207.01 *et seq.*

The applicant's goods/services:

1. Furniture made for medical purposes; stretchers; orthopedic articles, orthopedic bandages, corsets for medical purposes, stockings for varices; orthopedic shoes, supportive bandages; elastic bandages, abdominal belts, suspensory bandages, orthopedic belts and corsets, heating cushions for medical purposes, electric blankets for medical purposes, electrically heated pillows and sheets, water beds for medical purposes, beds and air pillows for medical purposes; surgical drapes, caps and masks for use by medical personnel, gloves for medical purposes, sterile sheets, sheets for patient beds, incontinence sheets
1. Furniture, display stands, showcases, filing cabinets, medicine cabinets, desks, trolleys, deck chairs, non-metallic counters, work benches, chests, mail boxes, fixed towel dispensers, camping furniture, office furniture, dining and bedroom furniture, living room furniture, bookcases, library

shelves, trestles, tables, armchairs, settees, divans, sofas, sofa-beds, school furniture, index cabinets, kitchen and bath cabinets, coat racks, coatstands, playpens for babies (for indoor use), exhibition, stage and display stands; mattresses, spring mattresses, pillows, cushions, air cushions, pillows and mattresses not for medical purposes

1. Woven and non-woven textile fabrics, fiberglass fabrics, fabrics impervious to gases, water proof fabrics, fabric of imitation animal skins, all kinds of linings, filtering materials of textile, curtains, shower curtains, household cloths, table cloths including made of plastic, bed covers, bed linen, pique, pillow cases, duvet covers, covers for furniture, table runners, napkins of textile, praying rugs, bed covers made of paper, duvets, quilts, blankets, bath gloves of textile, wash mitts, hand and face towels, bath towels, wall covering made of fabric, wall hangings, fabric handkerchiefs, flags made of fabric, labels, banners, monograms, protection covers of fabric

The goods listed above are highly related if not identical to registrant's goods namely

1. Registration Number 3048190: Class 035: Retail store services in the field of mattresses, bedroom furniture, linens, pillows, pads, and related accessories for beds"
1. Registration Number 3009891: Class 020: Furniture, including sleeping room furniture such as beds, bed frames, bed steeds; mirrors; picture frames; mattresses, spring mattresses; pillows and cushions, down pillows; Class 024: Textile products not included in other classes, namely bed covers and curtains; bed linen including sheets and pillow cases; mattress covers; quilts, down quilts; Class 035: Retail store services featuring furniture and home furnishing and interior decoration, including beds and other sleeping room furniture, curtains, bed covers, quilts, cushions, pillows, bed linen including sheets, quilt covers and pillow cases, towels, night gowns and bed clothes;

It is therefore quite likely that both applicant's and registrant's goods/services will travel through the same channels of trade to the same classes of purchasers.

Consumers are likely to be confused by the use of similar marks on or in connection with goods and with services featuring or related to those goods. *See In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) (BIGG'S for retail grocery and general merchandise store services held confusingly similar to BIGGS for furniture); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (CAREER IMAGE (stylized) for retail women's clothing store services and clothing held likely to be confused with CREST CAREER IMAGES (stylized) for uniforms); *In re United Service Distributors, Inc.*, 229 USPQ 237 (TTAB 1986) (design for distributorship services in the field of health and beauty aids held likely to be confused with design for skin cream); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB for various items of men's, boys', girls' and women's clothing held likely to be confused with THE "21" CLUB (stylized) for restaurant services and towels); *Steelcase Inc. v. Steelcare Inc.*, 219 USPQ 433 (TTAB 1983) (STEELCARE INC. for refinishing of furniture, office furniture, and machinery held likely to be confused with STEELCASE for office furniture and accessories); *Mack Trucks, Inc. v. Huskie Freightways, Inc.*, 177 USPQ 32 (TTAB 1972) (use of similar marks for trucking services and on motor trucks and busses is likely to cause confusion).

Please see attached third party evidence showing that mattresses, furniture, bedding and medical furniture and bedding are offered through the same channels of trade and through the same manufacture or producer.

The marks are very similar. The goods/services are identical. The similarities among the marks and the goods/services are so great as to create a likelihood of confusion among consumers. Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir., 1988). TMEP §§1207.01(d)(i).

B. Prior Pending Applications

Please be advised that a potentially conflicting mark in a prior-filed pending application may present a bar to registration.

Information regarding pending Application Serial Nos. 78857445, 78857461, 77069108 and 78885615 is enclosed. The filing date of the referenced application precedes applicant's filing date. There may be a likelihood of confusion between the two marks under Trademark Act Section 2(d), 15 U.S.C. §1052(d). If the referenced application registers, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon entry of a response to this Office action, action on this case may be suspended pending final disposition of the earlier-filed application.

If applicant believes there is no potential conflict between this application and the earlier-filed application, then applicant may present arguments relevant to the issue in a response to this Office action. The election not to submit arguments at this time in no way limits applicant's right to address this issue at a later point.

C. Identification and Clarification of Goods/Services

**1. International Class 010:**

**Furniture made for medical purposes**; stretchers; **orthopaedic articles**, orthopaedic bandages, **corsets for medical purposes**, **stockings for varices**; **orthopaedic shoes**, supportive bandages; elastic bandages, abdominal belts, **suspensory bandages**, orthopaedic belts and corsets, heating cushions for medical purposes, electric blankets for medical purposes, **electrically heated pillows and sheets**, **water beds for medical purposes**, beds and air pillows for medical purposes; surgical drapes, **caps and masks for use by medical personnel**, gloves for medical purposes, **sterile sheets**, **sheets for patient beds**, incontinence sheets

The wording in the identification of goods above needs clarification because it identifies goods that may be classified in more than one International class. In addition, the wording does not provide sufficient specificity. Applicant must clarify the identification of goods to specify the common commercial or generic name for the goods. If there is no common commercial or generic name, then applicant must describe the product and intended consumer as well as its main purpose and intended uses.

The international classification of goods and/or services in applications filed under Trademark Act Section 66(a) cannot be changed from the classification the International Bureau of the World

Intellectual Property Organization assigned to the goods and/or services in the corresponding international registration. TMEP §§1401.03(d) and 1904.02(b).

Therefore, any modification to this wording must identify goods and/or services in International Class 010, the classification specified in the application for these goods and/or services.

The following substitute wording is suggested, if appropriate:

International Class 010: Furniture made for medical purposes **[please further define type of furniture]**, stretchers; orthopedic articles **[please further define articles]**, orthopedic **support** bandages, corsets for medical purposes **[and therapeutic use]**, **medical compression** stockings for varices **[please further define varices]**; orthopedic shoes **[please further define these goods]**, supportive bandages; elastic bandages, abdominal belts, suspensory bandages **[please define suspensory]**, orthopedic belts and corsets, heating cushions for medical purposes, electric blankets for medical purposes, electrically heated pillows, electrically heated sheets, water beds **[please further define water beds because water bed heaters are in class 011 and water beds would be in class 020 and must be deleted from this application]** for medical purposes; **Hospital beds for use by burn patients [please indicate the specific type of beds as beds are listed in class 020 and must be deleted from class 010]** and air pillows for medical purposes; surgical drapes, **surgical** caps and masks for use by medical personnel, gloves for medical purposes, sterile sheets **[bed sheets are listed in class 024 and must be deleted from this application]**, sheets for patient beds**[bed sheets are listed in class 024 and must be deleted from this application]** , incontinence sheets

## 2. International Class 020

**Furniture**, display stands, showcases, filing cabinets, medicine cabinets, desks, **trolleys**, deck chairs, **non-metallic counters**, work benches, **chests**, **mail boxes**, **fixed towel dispensers**, camping furniture, office furniture, dining and bedroom furniture, living room furniture, bookcases, library shelves, **trestles**, tables, armchairs, settees, divans, sofas, sofa-beds, school furniture, index cabinets, kitchen and bath cabinets, coat racks, coat stands, playpens for babies **(for indoor use)**, exhibition, stage and display stands; mattresses, spring mattresses, pillows, cushions, air cushions, pillows and mattresses not for medical purposes, waterbeds, **camping mats**, sleeping bags for camping, mirrors, beehives, **waxcomb for beehives**, **comb foundations**; baby bassinets, cradles, infant walkers, **registration plates not of metal**, **signboards**, **sideboards**, signboards of wood or plastic; wooden barrels, **containers not of metal**, **transport containers**, wooden boxes, **chests**, **transport and loading pallets**, **plastic packaging containers**, **plastic barrels**, casks not of metal, **tanks**, **boxes**; **picture frames**, **picture frame brackets**, mouldings for picture frames; **curtain rollers**, **curtain hooks**, **curtain rails**, **curtain rings**, **curtain rods**; **tool handles not of metal**, **knife handles**, pegs (cloth pegs); bottle caps and **closures** not of metal, corks for bottles, **cork bands**; dowels not of metal, **cable clips**, **nuts**, **rivets**, **pins and screws not of metal**, **troughs for mixing mortar**; coat hangers, **covers for clothing**, **garment covers**; **works of art**, **statues**, **busts**, **statuettes of wood**, **wax**, **plaster or plastic**; mannequins, decorative wall plaques not of textile, stuffed animals; **baskets**, **bakers' bread baskets**, **wickerwork**, **fishing baskets**, **baskets for decoration and ornamentation**; kennels and nesting boxes for household pets, pet cushions and mattresses; Ladders of wood or plastic; **mobile boarding stairs for passengers**; **reels not of metal**; **name plates not of metal**, **identity plates not of metal**, **identification bracelets**, **door and window fittings**, **locks not of metal**, **fittings and pieces not of metal for furniture**, **fittings for shelves and racks**, **rails for drawers**, furniture casters not of metal; bamboo curtains, bead curtains for decoration, **indoor window blinds**, **slatted indoor blinds**

The wording in the identification of goods above needs clarification because it identifies goods that may be classified in more than one International class. In addition, the wording does not provide sufficient



specificity. Applicant must clarify the identification of goods to specify the common commercial or generic name for the goods. If there is no common commercial or generic name, then applicant must describe the product and intended consumer as well as its main purpose and intended uses.

The international classification of goods and/or services in applications filed under Trademark Act Section 66(a) cannot be changed from the classification the International Bureau of the World Intellectual Property Organization assigned to the goods and/or services in the corresponding international registration. TMEP §§1401.03(d) and 1904.02(b).

Therefore, any modification to this wording must identify goods and/or services in International Class 010, the classification specified in the application for these goods and/or services.

The following substitute wording is suggested, if appropriate:

Furniture, namely display stands, **showcases [please further define showcases in class 020]**, filing cabinets, medicine cabinets, desks, **[serving]** trolleys, deck chairs, non-metallic **[sale and display]** counters, work benches, **[furniture]** chests, **[non-metal]** mail boxes, fixed towel dispensers **[not of metal]**, camping furniture, office furniture, dining and bedroom furniture, living room furniture, bookcases, library shelves, trestle **[tables]**, tables, armchairs, settees, divans, sofas, sofa-beds, school furniture, index cabinets, kitchen and bath cabinets, coat racks, coat stands, playpens for babies (for indoor use) **[please remove parenthesis form the application]**, exhibition, stage and display stands; mattresses, spring mattresses, pillows, cushions, air cushions, pillows and mattresses not for medical purposes, waterbeds, camping mats **[please define camping mats]**, sleeping bags for camping, mirrors, beehives, waxcomb for beehives **[please define waxcomb further for proper classification]**, comb foundations **[please further define comb foundations]**; baby bassinets, cradles, infant walkers, registration **[novelty]** plates not of metal, signboards namely, signboards of wood or plastic; wooden barrels, containers not of metal **[for commercial use]**, transport containers **[this wording is indefinite]** namely **[Non-metal insulated shipping <http://atlas.netacgi/> - h73<http://atlas.netacgi/> - h75**containers for transporting frozen materials], wooden boxes, chests [this is duplicate wording please delete form the application, transport and loading pallets **[not of metal]**, plastic packaging containers namely **[Plastic containers, namely, tubs for consumer products <http://atlas.netacgi/> - h17<http://atlas.netacgi/> - h19** packaging], plastic barrels **[applicant must further define this product and use the acceptable common commercial name]**, casks not of metal, tanks **[tanks is indefinite applicant may use non-meatal storage tanks]**, boxes **[please further define boxes as plastic or wood]**; picture frames and picture frame brackets **[not of precious metal]**, moldings for picture frames; curtain rollers **[please use the common commercial name for curtain rollers]**, **[drapery hard ware namely curtain hooks, curtain rails, curtain ring and curtain rods;** Tool **[please replace tool with the wording wood]** handles not of metal, knife handles **[please further define knife handles as this may be listed in an additional international class]**, pegs (cloth pegs); bottle caps and closures **[please define closures]** not of metal, corks for bottles, cork bands [pleas define cork bands]; dowels not of metal, cable clips **[not of metal]**, **[non metal hardware namely]** nuts, rivets, pins and screws not of metal; [non-metal]troughs for mixing mortar; coat hangers, **[covers for clothing, garment covers] please further define covers as these goods may be listed in additional international classes];** works of art namely , statues , busts and statuettes made of wood, wax, plaster or plastic; mannequins, decorative wall plaques not of textile, stuffed animals; baskets, bakers' bread baskets, wickerwork, fishing baskets, baskets for decoration and ornamentation **[please remove baskets from the identification of goods as they are not listed in international class 020];** kennels and nesting boxes for household pets, pet cushions and mattresses. ladders of wood or plastic; mobile boarding stairs for passengers **[please further define these goods by**

using the common commercial name]; reels not of metal [please further define this product as to permit proper classification]; name plates not of metal [please further define this product as to permit proper classification]; , identity plates not of metal[please further define this product as to permit proper classification]; , identification bracelets [non-metal for hospital use], door and window fittings [please further define this product as to permit proper classification];, locks not of metal, fittings and pieces not of metal for furniture [please further define this product as to permit proper classification]; fittings for shelves and racks metal [please further define this product as to permit proper classification];, rails for drawers [please further define this product as to permit proper classification];, furniture casters not of metal; bamboo curtains, bead curtains for decoration, indoor window blinds [please indicate the material], slatted indoor blinds [please indicate the material].

### 3. International Class 024:

**Woven and non-woven textile fabrics, fiberglass fabrics, fabrics impervious to gases, water proof fabrics, fabric of imitation animal skins, all kinds of linings, filtering materials of textile, curtains, shower curtains, household cloths, table cloths** including made of plastic, **bed covers**, bed linen, **pique** , pillow cases, duvet covers, **covers for furniture, table runners**, napkins of textile, praying rugs, **bed covers made of paper**, duvets, quilts, blankets, bath gloves of textile, wash mitts, hand and face towels, bath towels, **wall covering made of fabric**, wall hangings, fabric handkerchiefs, flags made of fabric, **labels, banners, monograms, protection covers of fabric**

The bolded wording in the identification of goods above needs clarification because it identifies goods that may be classified in more than one International class. In addition, the wording does not provide sufficient specificity.

The international classification of goods and/or services in applications filed under Trademark Act Section 66(a) cannot be changed from the classification the International Bureau of the World Intellectual Property Organization assigned to the goods and/or services in the corresponding international registration. TMEP §§1401.03(d) and 1904.02(b).

Therefore, any modification to this wording must identify goods and/or services in International Class 024, the classification specified in the application for these goods and/or services.

The following substitute wording is suggested, if appropriate:

Woven and non-woven textile fabrics [**for home and commercial interiors**], fiberglass fabrics [**for textile use**], fabrics impervious to gases [for aeronautical balloons], water proof fabrics [**for manufacturing clothing, furniture and automobile upholstery, and luggage**], fabric of imitation animal skins, all kinds of linings [**this wording is completely indefinite and must be specified**], filtering materials of textile [**please further define to permit proper classification**], curtains, shower curtains, household cloths [**namely dish cloths**], table cloths [**not of paper**]including made of plastic, bed covers [**made of paper**], bed linen, pique [**please further define this material**], pillow cases, duvet covers, [**unfitted fabric**] covers for furniture, table runners [**made of fabric**], napkins of textile, praying rugs, bed covers made of paper [**please remove this is a duplicate good**], duvets, quilts, blankets, bath gloves of textile, wash mitts, hand and face towels, bath towels, wall covering made of fabric [**please further define this good to permit proper classification**], [**textile**] wall hangings, fabric handkerchiefs, flags made of fabric, labels [**of cloth**], banners [**of cloth**], monograms [**monograms must be deleted from the application as they are not listed in class 024**], protection covers of fabric [**please further define to allow for proper classification of goods**]

Please note that, while the identification of goods and/or services may be amended to clarify or limit the goods and/or services, adding to the goods and/or services or broadening the scope of the goods and/or services is not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, applicant may not amend the identification to include goods and/or services that are not within the scope of the goods and/or services set forth in the present identification.

For assistance with identifying goods and/or services in trademark applications, please see the online searchable Manual of Acceptable Identifications of Goods and Services at <http://tess2.uspto.gov/netathtml/tidm.html>.

#### D. Disclaimer Required

Trademark Act Section 6(a), 15 U.S.C. Section 1056(a), states that the Commissioner may require the applicant to disclaim an unregistrable component of a mark. Trademark Act Section 2(e), 15 U.S.C. Section 1052(e), bars the registration of a mark which is merely descriptive of the goods or services. Moreover, a component of a mark that is generic is likewise barred from registration. If an applicant does not comply with a disclaimer requirement, the examining attorney may refuse registration of the entire mark.

A “disclaimer” is thus a written statement that an applicant adds to the application record that states that applicant does not have exclusive rights, separate and apart from the entire mark, to particular wording and/or to a design aspect.

The applicant must disclaim the descriptive wording “**MATTRESS**” apart from the mark as shown. Trademark Act Section 6, 15 U.S.C. Section 1056; TMEP §§ 1213 and 1213.03(a). The wording merely describes applicants products and or related goods namely linens and pillows in all classes.

1. [http://encarta.msn.com/dictionary/\\_mattress.html](http://encarta.msn.com/dictionary/_mattress.html)

The computerized printing format for the Office’s *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

No claim is made to the exclusive right to use “**MATRESSES**” apart from the mark as shown.

*See In re Owatonna Tool Co.*, 231 USPQ 493 (Comm’r Pats. 1983).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir., 1988). TMEP §§1207.01(d)(i).

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney directly at the number below.

/William Rossman/  
Trademark Examining Attorney  
Law Office 109  
William.Rossman@USPTO.Gov  
(571) 272- 9029

**HOW TO RESPOND TO THIS OFFICE ACTION:**

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the *date of receipt in the Office*, not the postmarked date.** To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

**STATUS OF APPLICATION:** To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

**VIEW APPLICATION DOCUMENTS ONLINE:** Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

**GENERAL TRADEMARK INFORMATION:** For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.**

**To:** EVOTEKS EV VE OTEL TEKSTILI; SANAYI VE T ETC. (  
[pto\\_adl@vclmlaw.com](mailto:pto_adl@vclmlaw.com))

**Subject:** TRADEMARK APPLICATION NO. 79031661 - DR.MATTRESS -  
PHDL1185-001

**Sent:** 2/1/2008 12:06:49 PM

**Sent As:** ECOM109@USPTO.GOV

**Attachments:** [Attachment - 1](#)  
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[Attachment - 3](#)  
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## UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 79/031661

**MARK:** DR.MATTRESS

**CORRESPONDENT ADDRESS:**

Anthony D. Logan  
Venable, Campillo, Logan & Meaney PC

1938 E. Osborn Rd.  
Phoenix AZ 85016

**APPLICANT:** EVOTEKS EV VE OTEL  
TEKSTILI; SANAYI VE T ETC.

**\*79031661\***

**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**CORRESPONDENT'S  
REFERENCE/DOCKET NO:**  
PHDL1185-001  
**CORRESPONDENT E-MAIL ADDRESS:**  
pto\_adl@vclmlaw.com

## **FINAL OFFICE ACTION**

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE: 2/1/2008**

This is a final office action:

### **A. Compliance with Office Requirements**

In the first office action sent to applicant on January 11, 2007 the examining attorney refused registration based on a 2(d) likelihood of confusion refusal with the marks registration numbers 3048190 and 3009891. The examining attorney also added four prior pending applications to the office action namely, 78857445, 78857461, 77069108 and 78885615. The examining attorney asked and received a disclaimer of MATTRESSES and required the applicant to amend the identification of goods. The pending marks 78857445 and 78885615 have both abandoned. The other two pending application requirements, namely, 78857461 and 77069108 have been withdrawn by the examining attorney.

The 2(d) citation for the mark 3009891 BEDDOC has also been withdrawn. The only citation left as a bar to registration is the registration number 3048190 for Mattresses Doctor.

Applicant has submitted arguments concerning the 2(d) refusal. The examining attorney has considered the applicant's arguments carefully but has found them unpersuasive. **For the reasons below, the refusal under Section 2(d) as to registration number 3048190 and the requirement for an amended identification of goods is maintained and made FINAL.**

### **B. Refusal to Register: Likelihood of Confusion**

Registration of the proposed mark is refused because of a likelihood of confusion with the marks in U.S. Registration No. 3048190. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registration

A likelihood of confusion determination involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.*

## Similarity of the Marks

1. Applicant first argues that when viewed in their entirety, there is no likelihood of confusion between applicant's mark and registrant's mark

The examining attorney must look at the marks in their entirety under Section 2(d). Nevertheless, one feature of a mark may be recognized as more significant in creating a commercial impression. Greater weight is given to that dominant feature in determining whether there is a likelihood of confusion. *In re National Data Corp.*, 224 USPQ 749 (Fed. Cir. 1985); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976). *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1988). TMEP §1207.01(b)(viii). In this instance the dominant wording is the term DR or DOCTOR as the term MATTRESS is disclaimed as descriptive.

Disclaimed matter is typically less significant or less dominant when comparing marks. Although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entirety, one feature of a mark may be more significant in creating a commercial impression. *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); *In re National Data Corporation*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); and *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553 (TTAB 1987). See also *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ 2d 1001 (Fed. Cir. 2002); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693 (C.C.P.A. 1976); *In re El Torito Rests. Inc.*, 9 USPQ2d 2002 (TTAB 1988); *In re Equitable Bancorporation*, 229 USPQ 709 (TTAB 1986).

The applicant's mark DR. MATTRESS and the wording in the registered marks MATTRESS DOCTOR are similar in appearance and sound and would create the same general overall commercial impression among potential consumers. Similarity in sound alone is sufficient to find a likelihood of confusion. *Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469 (TTAB 1975); *In re Cresco Mfg. Co.*, 138 USPQ 401 (TTAB 1963). TMEP §1207.01(b)(iv).

Furthermore Applicant's mark is essentially a transposition of the registrant's mark MATTRESS DOCTOR and creates a similar commercial impression and meaning. *In re Wine Society of America Inc.*, 12 USPQ2d 1139 (TTAB 1989); *In re Nationwide Indus. Inc.*, 6 USPQ2d 1882 (TTAB 1988); *In re General Tire & Rubber Co.*, 213 USPQ 870 (TTAB 1982); TMEP §1207.01(b)(vii).

The literal portions of both marks are very similar in appearance, sound and meaning. The addition of the design element in applicant's mark does not obviate the similarity between the marks in this case. *In re Shell Oil Company*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993); *Coca-Cola Bottling Co. v. Joseph E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975); TMEP §1207.01(c)(ii).

1. The applicant does not offer any arguments that the goods are different but the examining attorney will touch on these issues briefly and submit evidence as to their relatedness

## Similarity of the Goods

The second part of the legal analysis involves comparing the goods to determine whether they are similar or related, and could cause a mistaken belief among potential purchasers that the goods come from a common source. The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. The fact that the goods of the parties differ is not controlling in determining likelihood of confusion. The issue is not likelihood of confusion between particular goods, but likelihood of confusion as to the source of those goods. See *In re Rexel Inc.*, 223 USPQ 830, 831, (TTAB 1984), and cases cited therein; TMEP §§1207.01 *et seq.*



The applicant's goods/services:

1. Class 010: Furniture made for medical purposes namely mattresses, stretchers; orthopedic articles namely beds, chairs, orthopedic support bandages, corsets for medical purposes and therapeutic use, medical compression stockings; orthopedic footwear, supportive bandages; elastic bandages, abdominal belts, orthopedic belts and corsets, heating cushions for medical purposes, electric blankets for medical purposes, electrically heated pillows, electrically heated sheets, and air pillows for medical purposes; surgical drapes, surgical caps and masks for use by medical personnel, gloves for medical purposes, incontinence sheets, water beds for medical purposes; and hospital beds for use by burn patient.
1. Class 020: Furniture, namely display stands, filing cabinets, medicine cabinets, desks, serving trolleys, deck chairs, non-metallic sale and display counters, work benches, furniture chests, non-metal mail boxes, fixed towel dispensers not of metal, camping furniture, office furniture, dining and bedroom furniture, living room furniture, bookcases, library shelves, trestle tables, tables, armchairs, settees, divans, sofas, sofa-beds, school furniture, index cabinets, kitchen and bath cabinets, coat racks, coat stands, playpens for babies for indoor use, exhibition, stage and display stands; mattresses, spring mattresses, pillows, cushions, air cushions, pillows and mattresses not for medical purposes, waterbeds, camping mats for placing under sleeping bags, sleeping bags for camping, mirrors, beehives, baby bassinets, cradles, infant walkers, registration novelty plates not of metal, signboards namely, signboards of wood or plastic; wooden barrels, containers not of metal for commercial use, wooden boxes, transport and loading pallets not of metal, picture frames and picture frame brackets not of precious metal, moldings for picture frames; drapery hard ware namely curtain hooks, curtain rails, curtain rollers, curtain ring and curtain rods; tool handles not of metal namely wood handles; pegs (cloth pegs); dowels not of metal, cable clips not of metal, non metal hardware namely nuts, rivets, pins and screws not of metal; non-metal troughs for mixing mortar; coat hangers, covers for clothing, garment covers; works of art namely , statues , busts and statuettes made of wood, wax, plaster or plastic; mannequins, decorative wall plaques not of textile, stuffed animals. baskets not of metal, baker's bread baskets, wickerwork, fishing baskets, kennels and nesting boxes for household pets, pet cushions and mattresses; ladders of wood or plastic; mobile boarding stairs not of metal for passengers; name plates not of metal; identity plates not of metal; identification bracelets; locks not of metal, fittings and pieces not of metal for furniture; fittings for shelves and racks metal; furniture casters not of metal; bamboo curtains, bead curtains for decoration, and indoor window blinds.
1. Class 024: Woven and non-woven textile fabrics for home and commercial interiors, fiberglass fabrics for textile use, fabrics impervious to gases for aeronautical balloons, water proof fabrics for manufacturing clothing, furniture and automobile upholstery, and luggage, fabric of imitation animal skins, filtering materials of textile; curtains, shower curtains, household cloths namely dish cloths, table cloths not of paper; table cloths made of plastic, bed covers made of paper, bed linen, pique, namely a light sheet used in the summertime in place of a duvet, pillow cases, duvet covers, unfitted fabric covers for furniture, table runners made of fabric, napkins of textile, praying rugs, duvets, quilts, blankets, bath gloves of textile, wash mitts, hand and face towels, bath towels, wall covering made of fabric used in place of wall paper; textile wall hangings, fabric handkerchiefs, flags made of fabric, labels of cloth, banners of cloth, protection covers of fabric, namely furniture coverings of textile

The goods listed above are highly related if not identical to registrant's goods namely

1. Registration Number 3048190: Class 035: Retail store services in the field of mattresses, bedroom furniture, linens, pillows, pads, and related accessories for beds"

It is therefore quite likely that both applicant's and registrant's goods/services will travel through the same channels of trade to the same classes of purchasers.

1. <http://64.233.169.104/search?q=cache:it7eGjklal4J:www.kmpfurniture.com/+bedroom+furniture+an> relates to show bedrooms and sofas are made by the same entity
1. <http://64.233.169.104/search?q=cache:qeELvzbXMJwJ:www.broyhillfurniture.com/+bedroom+furn> relates to show bedrooms and sofas are made by the same entity
1. <http://64.233.169.104/search?q=cache:d4reM1BPvl0J:www.waterbed.com/+waterbeds&hl=en&ct=c> relates to show that water beds for all uses are made by the same entity
1. <http://64.233.169.104/search?q=cache:DMneUu3xV08J:www.livingincomfort.com/+orthopedic+bec> relates to show orthopedic beds are sold alongside regular beds
1. [http://64.233.169.104/search?q=cache:BkK\\_y08FizsJ:www.foambed.com/+orthopedic+beds+and+n](http://64.233.169.104/search?q=cache:BkK_y08FizsJ:www.foambed.com/+orthopedic+beds+and+n) relates to show orthopedic beds are sold alongside regular beds
1. <http://64.233.169.104/search?q=cache:RpxXJAgFCbkJ:www.allergybuyersclubshopping.com/royal-pedic-all-cotton-mattresses-beds-pads.html+orthopedic+beds+and+mattresses&hl=en&ct=clnk&cd=4&gl=us> relates to show orthopedic beds are sold alongside regular beds

Consumers are likely to be confused by the use of similar marks on or in connection with goods and with services featuring or related to those goods. *See In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) (BIGG'S for retail grocery and general merchandise store services held confusingly similar to BIGGS for furniture); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (CAREER IMAGE (stylized) for retail women's clothing store services and clothing held likely to be confused with CREST CAREER IMAGES (stylized) for uniforms); *In re United Service Distributors, Inc.*, 229 USPQ 237 (TTAB 1986) (design for distributorship services in the field of health and beauty aids held likely to be confused with design for skin cream); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB for various items of men's, boys', girls' and women's clothing held likely to be confused with THE "21" CLUB (stylized) for restaurant services and towels); *Steelcase Inc. v. Steelcare Inc.*, 219 USPQ 433 (TTAB 1983) (STEELCARE INC. for refinishing of furniture, office furniture, and machinery held likely to be confused with STEELCASE for office furniture and accessories); *Mack Trucks, Inc. v. Huskie Freightways, Inc.*, 177 USPQ 32 (TTAB 1972) (use of similar marks for trucking services and on motor trucks and busses is likely to cause confusion).

Moreover, any goods or services in the registrant's normal fields of expansion must also be considered in order to determine whether the registrant's goods or services are related to the applicant's identified goods or services for purposes of analysis under Section 2(d). *In re General Motors Corp.*, 196 USPQ 574 (TTAB 1977). The test is whether purchasers would believe the product or service is within the registrant's logical zone of expansion. *CPG Prods. Corp. v. Perceptual Play, Inc.*, 221 USPQ 88 (TTAB 1983); TMEP §1207.01(a)(v).

Please see attached third party evidence showing that textile fabrics, pillows and linens are offered through the same channels of trade and through the same manufacture or producer. It is clear that many of the textile items are related to bedding and are manufacture by the same entities. It is also clear from the third party registrations that different types of furniture are related.

The marks are very similar. The goods/services are identical. The similarities among the marks and the goods/services are so great as to create a likelihood of confusion among consumers. Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration. The examining attorney must resolve any doubt regarding a likelihood of confusion in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir., 1988). TMEP §§1207.01(d)(i).

### C. Identification and Clarification of Goods/Services

- **International Class 010:** Furniture made for medical purposes namely mattresses, stretchers; orthopedic articles namely beds, **[massage]** chairs **[applicant must further define these goods namely beds and chairs as they are normally listed in class 020 applicant may use massage for chairs if applicable]**, orthopedic support bandages, corsets for medical purposes and therapeutic use, medical compression stockings; orthopedic footwear, supportive bandages; elastic bandages, abdominal belts, orthopedic belts and corsets, heating cushions for medical purposes, electric blankets for medical purposes, electrically heated pillows, electrically heated sheets **[please further define electrically heated pillows and sheets in class 010]**, and air pillows for medical purposes; surgical drapes, surgical caps and masks for use by medical personnel, gloves for medical purposes, incontinence sheets, water beds for medical purposes; and hospital beds for use by burn patients

The wording in the identification of goods above needs clarification because it identifies goods that may be classified in more than one International class. In addition, the wording does not provide sufficient specificity as to the pillows and sheets of the electric variety and orthopedic beds.

Applicant may adopt the following wording if accurate:

Furniture made for medical purposes namely mattresses, stretchers; orthopedic articles namely beds, **[massage]** chairs **[applicant must further define these goods namely beds and chairs as they are normally listed in class 020 applicant may use massage for chairs if applicable]**, orthopedic support bandages, corsets for medical purposes and therapeutic use, medical compression stockings; orthopedic footwear, supportive bandages; elastic bandages, abdominal belts, orthopedic belts and corsets, heating cushions for medical purposes, electric blankets for medical purposes, electrically heated pillows, electrically heated sheets **[please further define electrically heated pillows and sheets in class 010]**, and air pillows for medical purposes; surgical drapes, surgical caps and masks for use by medical personnel, gloves for medical purposes, incontinence sheets, water beds for medical purposes; and hospital beds for use by burn patients

- **Class 020:** Furniture, namely display stands, filing cabinets, medicine cabinets, desks, serving trolleys, deck chairs, non-metallic sale and display counters, work benches, furniture chests, non-metal mail boxes, fixed towel dispensers not of metal, camping furniture, office furniture, dining and bedroom furniture, living room furniture, bookcases, library shelves, trestle tables, tables, armchairs, settees, divans, sofas, sofa-beds, school furniture, index cabinets, kitchen and bath cabinets, coat racks, coat stands, playpens for babies for indoor use, exhibition, stage and display stands; mattresses, spring mattresses, pillows, cushions, air cushions, pillows and mattresses not

for medical purposes, waterbeds, camping mats for placing under sleeping bags, sleeping bags for camping, mirrors, beehives, baby bassinets, cradles, infant walkers, registration novelty plates not of metal, signboards namely, signboards of wood or plastic; wooden barrels, containers not of metal for commercial use, wooden boxes, transport and loading pallets not of metal, picture frames and picture frame brackets not of precious metal, moldings for picture frames; drapery hardware namely curtain hooks, curtain rails, curtain rollers, curtain rings and curtain rods; tool handles not of metal namely wood handles; pegs (cloth pegs); dowels not of metal, cable clips not of metal, non metal hardware namely nuts, rivets, pins and screws not of metal; non-metal troughs for mixing mortar; coat hangers, covers for clothing, garment covers; works of art namely, statues, busts and statuettes made of wood, wax, plaster or plastic; mannequins, decorative wall plaques not of textile, stuffed animals; baskets not of metal, baker's bread baskets, wickerwork, fishing baskets, kennels and nesting boxes for household pets, pet cushions and mattresses; ladders of wood or plastic; mobile boarding stairs not of metal for passengers; name plates not of metal; identity plates not of metal; identification bracelets; locks not of metal, fittings and pieces not of metal for furniture; fittings for shelves and racks metal; furniture casters not of metal; bamboo curtains, bead curtains for decoration, and indoor window blinds.

The wording in the identification of goods above needs clarification because it identifies goods that may be classified in more than one International class.

Applicant may adopt the following wording if accurate:

Class 020: Furniture, namely display stands, filing cabinets, medicine cabinets, desks, serving trolleys, deck chairs, non-metallic sale and display counters, work benches, furniture chests, non-metal mail boxes, fixed towel dispensers not of metal, camping furniture, office furniture, dining and bedroom furniture, living room furniture, bookcases, library shelves, trestle tables, tables, armchairs, settees, divans, sofas, sofa-beds, school furniture, index cabinets, kitchen and bath cabinets, coat racks, coat stands, playpens for babies for indoor use, exhibition, stage and display stands; mattresses, spring mattresses, pillows, cushions, air cushions, pillows and mattresses not for medical purposes, waterbeds, camping mats [**please define e.g. namely sleeping mats**] for placing under sleeping bags, sleeping bags for camping, mirrors, beehives, baby bassinets, cradles, infant walkers, registration novelty [**license**] plates not of metal, signboards namely, signboards of wood or plastic; wooden barrels, containers not of metal for commercial use, wooden boxes, transport and loading pallets not of metal, picture frames and picture frame brackets not of precious metal, moldings for picture frames; drapery hardware namely curtain hooks, curtain rails, curtain rollers, curtain rings and curtain rods; tool handles not of metal namely wood handles; pegs [**please define e.g. non-metal pegs**] dowels not of metal, cable clips not of metal, non metal hardware namely nuts, rivets, [**cotter**] pins and screws not of metal; non-metal troughs for mixing mortar; coat hangers, covers for clothing [**please define these covers**], garment covers [**garment bags are normally listed in class 021 so please define in class 020**]; works of art namely, statues, busts and statuettes made of wood, wax, plaster or plastic; mannequins, decorative wall plaques not of textile, stuffed animals; baskets not of metal [**please define in class 020 as baskets not metal are listed in class 021**], baker's bread baskets, wickerwork [**please define wickerwork**], fishing baskets, kennels and nesting [**wood**] boxes [**please define nesting boxes if wood**] for household pets, pet cushions and mattresses; ladders of wood or plastic; mobile boarding stairs not of metal for passengers; name plates not of metal; identity plates not of metal; [**non-metal**] identification bracelets [**not as jewelry**]; locks not of metal, fittings and pieces not of metal for furniture; fittings for shelves and racks metal; furniture casters not of metal; bamboo curtains, bead curtains for decoration, and indoor window blinds.

- Class 024: Woven and non-woven textile fabrics for home and commercial interiors, fiberglass fabrics for textile use, fabrics impervious to gases for aeronautical balloons, water proof fabrics for manufacturing clothing, furniture and automobile upholstery, and luggage, fabric of imitation animal skins, filtering materials of textile; curtains, shower curtains, household cloths namely dish cloths, table cloths not of paper; table cloths made of plastic, bed covers made of paper, bed linen, pique, namely a light sheet used in the summertime in place of a duvet, pillow cases, duvet covers, unfitted fabric covers for furniture, table runners made of fabric, napkins of textile, praying rugs, duvets, quilts, blankets, bath gloves of textile, wash mitts, hand and face towels, bath towels, wall covering made of fabric used in place of wall paper; textile wall hangings, fabric handkerchiefs, flags made of fabric, labels of cloth, banners of cloth, protection covers of fabric, namely furniture coverings of textile

The wording in the identification of goods above needs clarification because it identifies goods that may be classified in more than one International class.

Applicant may adopt the following wording if accurate:

Class 024: Woven and non-woven textile fabrics for home and commercial interiors, [namely] fiberglass fabrics for textile use, fabrics impervious to gases for aeronautical balloons [**namely zephyr fabric**], water proof fabrics for manufacturing clothing, furniture and automobile upholstery, and luggage, fabric of imitation animal skins; filtering materials of textile [**please further define these goods in class 024**]; curtains and shower curtains; household cloths namely dish cloths, table cloths not of paper; table cloths made of plastic, bed covers made of paper, bed linen; pique, namely a light sheet used in the summertime in place of a duvet [please define pique in class 024 as it appears to be listed in class 025]; pillow cases, duvet covers, unfitted fabric covers for furniture, table runners made of fabric, napkins of textile, praying rugs, duvets, quilts, blankets, bath gloves of textile, wash mitts, hand and face towels, bath towels, wall covering made of fabric used in place of wall paper [**cloth wall covering appear to be listed in class 027 so please define further**]; textile wall hangings, fabric handkerchiefs, flags made of fabric, labels of cloth, banners of cloth, protection covers of fabric, namely furniture coverings of textile

Please note that, while the identification of goods and/or services may be amended to clarify or limit the goods and/or services, adding to the goods and/or services or broadening the scope of the goods and/or services is not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, applicant may not amend the identification to include goods and/or services that are not within the scope of the goods and/or services set forth in the present identification.

Advisory: The international classification of goods and/or services in applications filed under Trademark Act Section 66(a) cannot be changed from the classification given to the goods and/or services by the International Bureau of the World Intellectual Property Organization in the corresponding international registration. TMEP §§1401.03(d), 1401.04 and 1904.02(b).

For assistance with identifying goods and/or services in trademark applications, please see the online searchable Manual of Acceptable Identifications of Goods and Services at <http://tess2.uspto.gov/netahtml/tidm.html>.

Although the examining attorney has refused registration, the applicant may respond to the refusal to

register by submitting evidence and arguments in support of registration.

If, after careful review of the contents of this Office Action and of the recommended Trademark Office web site links discussed above and noted below, the applicant still has questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

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**RESPOND TO THIS ACTION:** If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office action should be filed using the form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.